

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

WRIT PETITION NO. 2349 OF 2017

Dr. Ramesh Mahadu Bole
Age : 36 years, Occu. Medical Practitioner,
R/o. Bole Hospital, Tamsa Road,
Ardhapur, Tq. Ardhapur,
Dist. Nanded.

... Petitioner

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Department of Public Health & Family Welfare,
Mantralaya, Mumbai.
 2. District Appropriate Authority / Civil Surgeon,
Nanded, Main Road, Opposite to Collector Office,
Vazirabad, Nanded.
 3. Sub-District Appropriate Authority/Medical Superintendent,
Rural Hospital, Barad, Mukhed,
Dist. Nanded.
- ... Respondents

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Mr S. G. Chapalgaonkar, Advocate for the petitioner
Mrs M. A. Deshpande, AGP for respondent/State
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**CORAM : S. V. GANGAPURWALA &
A. M. DHAVAL, JJ.**

DATE : 13TH FEBRUARY, 2018.

ORAL JUDGMENT (PER S. V. GANGAPURWALA, J.) :

1. Rule. Rule made returnable forthwith. With the consent of parties taken up for final disposal.

2. The petitioner assails the order of suspension of the registration of Sonography Centre and the order of seizure of sonography machine so also the order of the appellate authority.

3. Mr Chapalgaonkar, the learned counsel submits that, the show-cause notice was issued to the petitioner seeking explanation as to why the registration of the petitioner's Sonography Centre should not be suspended as per Section 20 of the Pre-conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as the "PCPNDT Act") and the Sonography Machine was also seized under the panchanama dt. 17.03.2016. The petitioner replied the show-cause notice. The authority thereafter on the ground of public interest suspended the registration of the petitioner's Sonography Centre for indefinite period. The petitioner filed an appeal before the appellate authority. The appeal is dismissed. The learned counsel submits that, even the criminal case filed by the respondent is stayed by this Court and the proceedings before this Court are pending. According to the learned counsel, if the allegations in the show-cause notice and the impugned order are perused, they are in the nature of clerical defects of non-maintenance of forms in a proper manner i.e. signature of Doctor not appearing on the 'F' form or the signature of the ladies not appearing in the 'F'

form. No serious allegations are levelled against the petitioner. The learned counsel submits that, further all those ladies named in the order of suspension of having not signed the forms have delivered male/female child. Even that would substantiate the case of the petitioner that no illegality has been committed by the petitioner. The learned counsel submits that, there was no reason to believe that the sonography machine would furnish evidence of commission of an offence punishable under the Act as required u/s 30 of the PCPNDT Act. The learned advocate relies on the judgment of the Division Bench of this Court in Writ Petition No. 7847 of 2016 dt. 14.10.2016.

4. Mrs Deshpande, learned Addl. Government Pleader submits that, the infirmity in the form would go to show the intention of the petitioner in committing the offence. Even non-maintenance of record and the forms not being signed by the ladies and the doctor would invoke violation of Sections 5, 6, 25 and 29 of the PCPNDT Act and Rule 9 of the PCPNDT Rules. The learned Addl. Government Pleader further submits that the petitioner himself has got stayed the criminal proceedings by approaching this Court and had stalled the trial of the criminal case. In view of that, he can not take the advantage of the suspension period being prolonged. The authorities have rightly considered all the relevant aspects.

5. Section 20 of the PCPNDT Act, more particularly, sub-sections 2 and 3 thereof authorizes the appropriate authority to suspend the registration of the centre, laboratory or a clinic if the authority is satisfied that there has been a breach of the provisions of this Act or Rules or that suspension is expedient in public interest. Section 30 of PCPNDT Act authorizes the appropriate authority to seize and seal the Sonography Machine if he has reason to believe that it may furnish evidence of the commission of offence punishable under the said Act.

6. Perusal of the order of suspension, it is clear that the allegations against the petitioner were about the 'F' form not being signed by the ladies and some of the forms by the Doctor. The petitioner has come forward with a case that, all these ladies who have been mentioned in the order of suspension of not having signed the form have subsequently delivered male/female child.

7. Section 20 of the PCPNDT Act can be resorted to suspend the registration of any such Centre for a particular period. Sub-section 2 of Section 20 gives powers to suspend the registration for such period as the appropriate authority may think fit. In the present case, the suspension is until further orders. It is almost two years the registration of the petitioner's Sonography centre has been

suspended. The criminal case is stayed by this Court having *prima facie* formed its opinion in favour of the petitioner.

8. Even for seizure of the Sonography machine, the authority should have reason to believe that the said Sonography machine would furnish evidence of commission of offence punishable under the PCPNDT Act. "Reason to believe" or "reasonable belief" means coming to factual conclusion on the basis of information that a thing, condition, statement or a fact exists. Reason to believe contemplates an objective determination based on intelligent care and deliberation as distinguished from purely subjective consideration. The said expression is not synonymous to subjective satisfaction of the authority. It postulates belief and existence of reason for that belief. The belief has to be held in good faith. It cannot be a mere pretence. The reason for the belief must have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant for the purpose of the section."

9. No such reason to believe appears in the order of seizure of the Sonography Machine.

10. Considering the aforesaid anomalies and the fact that, the criminal proceedings have been stayed against the petitioner so also

the suspension is almost for a period of two years and the allegations were in respect of non-maintenance of 'F' form in a particular manner and further *prima facie* finding that the ladies who were shown to have not signed the 'F' form have subsequently delivered male/female child, we are inclined to exercise our jurisdiction.

11. The impugned order is quashed and set aside. Rule is made absolute in terms of prayer clauses 'B' and 'C'

12. The present order would not be an impediment for the appropriate authority to take further course of action upon culmination of the criminal proceedings.

[A. M. DHAVALA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

Punde